IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3265 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. FAG PRECISION BEARING LTD. - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

NANAVATI ASSOCIATES for Petitioner(s) : 1,
MS ARCHANA RAVAL AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/12/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty (Valuation), Vadodara dtd.11/12/1989 directing the petitioner to pay an amount of Rs.41,983.50 ps. towards the deficit stamp duty and Rs.1,000=00 towards the penalty in all Rs.42,983.50 ps. It appears from the record that for the property situated within the local limits of State of Gujarat, a document / Mortgage Deed came to be entered into between the petitioner Company and one Bank of America National Trusts and Savings Association at Mumbai and the said Mortgage Deed was registered with the Sub-Registrar, Bombay and the petitioner paid stamp duty prevailing within the State of Maharashtra.

Thereafter, the proceedings were initiated by the Dy.Collector, Stamp Duty (Valuation), Vadodara directing the petitioner to pay stamp duty at the rate prevailing in the State of Gujarat and considering the fact that if the document would have been executed and registered within the State of Gujarat, the petitioner would have required to pay stamp duty of Rs.90,000=00, as the petitioner has used stamp duty of only Rs.48,016.50 ps. by registering the said document within the State of Maharashtra and the the petitioner has used less stamp duty of Rs.41,983.50 ps., proceedings came to be initiated and a show cause notice was issued by the Dy.Collector, Stamp Duty (Valuation), Vadodara dtd.29/5/1989 calling upon the petitioner to show cause as to why the aforesaid deficit amount of stamp duty with penalty should not be recovered from the petitioner. Thereafter, after giving an opportunity to the petitioner, the impugned order came to be passed passed by

the Dy.Collector, Stamp Duty, Vadodara dtd.11/12/1989 directing the petitioner to pay deficit stamp duty of Rs.41,983.50 ps. and Rs.1,000=00 towards penalty under sec.39(1)(B) of the Bombay Stamp Act, 1958 (hereinafter referred to as “the Act” for convenience). Being aggrieved by and dissatisfied with the order passed by the Dy.Collector, Stamp Duty (Valuation), Vadodara dtd.11/12/1989, the petitioner has preferred the present petition under Article 226 of the Constitution of India.

2. Learned advocate appearing on behalf of the petitioner, while relying upon Sec.19 of the Act has submitted that if any instrument is executed out of the State and **subsequently received in the State** then and then only, the amount of duty is chargeable on such instrument. It is the contention of the petitioner that as in the present case the Mortgage Deed was executed out side the State of Gujarat i.e. in Bombay and

subsequently loan amount was paid, and the said document / Mortgage Deed was never received in the State of Gujarat, the impugned order is required to be quashed and set aside. No other submission has been made on behalf of the petitioner.

3. Ms.Archana Raval, learned AGP has relied upon sec.7 of the Act and has submitted that the impugned order passed by the Dy.Collector is in consonance with the provisions of the Act more particularly sec.7 of the Act, as it is not necessary that the instrument must received within the State of Gujarat and the duty is chargeable on an instrument if the principal or original instrument would, when received in this State, have been chargeable under this Act with a higher rate of duty. Under the circumstances, it is requested to dismissed the petition.

4. Having heard the learned advocates

appearing on behalf of the parties and considering the material on record, it is not in dispute that the document / Mortgage Deed came to be executed at Mumbai for the property situated within the State of Gujarat i.e. at Vadodara and the petitioner used stamp duty of Rs.48,016=50 ps. If the petitioner would have executed the aforesaid Mortgage Deed and presented it before the Sub-Registrar, Vadodara i.e. before the authority situated within the State of Gujarat, then in that case, the petitioner was required to use stamp duty of Rs.90,000=00. It appears that the petitioner has executed the said deed at Mumbai with a view to avoid payment of higher stamp duty which was prevailing in the State of Gujarat. To avoid such a situation, the State Government has made a provision in sec.7 of the Act. As per sec.7 of the Act, notwithstanding contained in sec.4 or sec.6 or in other enactments, unless it is proved that the duty chargeable under the Act has

been paid on the property or original instrument as the case may be, or in accordance with the provisions of sec.7, the duty chargeable on an instrument of sale deed or settlement shall, if the principal of original instrument would, when receive in State of Gujarat have been chargeable under the Act with a higher rate of duty, be the duty with which principal or original instrument would have been chargeable under sec.19 of the Act. Therefore, the contention on behalf of the petitioner that only when the instrument is received in the State, then and then only the duty is chargeable on that instrument, cannot be accepted. Sec.7 of the Act is clear and unambiguous and if the principal or original document would, when receive in the State, would have been chargeable under the Act with a higher rate of duty, in that case, the duty is chargeable on the said instrument. The legislature in his legislative wisdom has made this provision with a view to avoid any mischief

of avoiding stamp duty by executing document by a person in a State where there is lower rate of stamp duty and to avoid higher rate of stamp duty prevailing in the State where the property is situated. Under the circumstances, and considering the provisions of Sec.7 of the Act, it cannot be said that the impugned order passed by the Deputy Collector is in any way illegal, erroneous or arbitrary, which requires interference at the hands of this Court in exercise of the powers under Article 226 of the Constitution of India. The impugned order passed by the Deputy Collector is in consonance with the provisions of sec.7 of the Act. Thus, there is no substance in the petition and the same is required to be dismissed.

5. For the reasons stated hereinabove, the petition fails and the same is dismissed. Rule is discharged. Interim relief granted earlier,if any, stands vacated forthwith. However, there

will be no order as to costs.

6. In view of the Undertaking given by the Managing Director of the petitioner Company pursuant to the interim order passed by this Court to the effect that if the petitioner fails in the petition, he would pay the principal amount with penalty and interest at the rate of 15% per annum from the date of the order passed by the Deputy Collector, the petitioner is directed to pay the aforesaid amount of Rs.42,983=50 with interest at the rate of 15% per annum from the date of order passed by the Deputy Collector dtd.11/12/1989 within THREE MONTHS from today.

(M.R. SHAH,J.)

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